No. 98-1932 (6)

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Supreme Court of the United States

GEORGE PATAKI, as Governor of the State of New York, THE NEW YORK STATE EDUCATION DEPARTMENT, RICHARD P. MILLS, as Commissioner of the New York State Education Department, THE NEW YORK STATE BOARD OF REGENTS, H. CARL MCCALL, as the New York State Comptroller, THE BOARD OF EDUCATION OF THE KIRYAS JOEL UNION FREE SCHOOL DISTRICT, THE BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT and DR. WILLIAM J. BASSETT, JR., as District Superintendent of the Orange-Ulster BOCES,

Petitioners,

v.

LOUIS GRUMET AND CAROLINE C. SHIPLEY,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of New York

PETITIONERS' SUPPLEMENTAL BRIEF

NATHAN LEWIN
SCOTT L. NELSON
J. BRADLEY BENNETT
MILLER, CASSIDY, LARROCA & LEWIN, L.L.P.
2555 M Street, N.W.
Washington, D.C. 20037
(202) 293-6400

GEORGE SHEBITZ
JULIA R. COHEN
GEORGE SHEBITZ & ASSOC., P.C.
1370 Avenue of the America
New York, New York 10019
(212) 307-0909

Attorneys for the Board of Education of the Kiryas Joel Union Free School District

ELLIOT SPITZER
ATTORNEY GENERAL OF THE STATE OF NEW YORK
PREETA D. BANSAL*
SOLICITOR GENERAL OF THE STATE OF NEW YORK
PETER H. SCHIFF
DEPUTY SOLICITOR GENERAL
JULIE S. MERESON
ASSISTANT ATTORNEY GENERAL
The Capitol
Albany, New York 12224
(518) 474-3654

Attorneys for the State Petitioners

**Counsel of Record*

[additional counsel listed on inside cover]

LAWRENCE W. REICH
INGERMAN SMITH, L.L.P.
167 Main Street
Northport, New York 11768
(516) 261-8834

Attorneys for the Board of Education of the Monroe-Woodbury Central School District

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No. 98-1932

IN THE
SUPREME COURT OF THE UNITED STATES

GEORGE PATAKI, as Governor of the State of New York, THE NEW YORK STATE EDUCATION DEPARTMENT, RICHARD P. MILLS, as Commissioner of the New York State Education Department, THE NEW YORK STATE BOARD OF REGENTS, H. CARL MCCALL, as the New York State Comptroller, THE BOARD OF EDUCATION OF THE KIRYAS JOEL UNION FREE SCHOOL DISTRICT, THE BOARD OF EDUCATION OF THE MONROE-WOODBURY CENTRAL SCHOOL DISTRICT, and DR. WILLIAM J. BASSETT, JR., as District Superintendent of the Orange-Ulster BOCES,

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PETITIONERS' SUPPLEMENTAL BRIEF

Pursuant to Rule 15.8 of the Rules of this Court, the petitioners submit this Supplemental Brief to apprise the Court of the enactment of legislation relating to the matter in controversy in this case and to discuss the pertinence of that

legislation to the Court's consideration of our petition for a writ of certiorari.

On August 3, 1999, the New York Legislature enacted an omnibus budget bill which included an amendment to the portion of New York's Education Law that defines the powers of district superintendents. The legislation, which is reproduced in the Appendix to this brief, authorizes a district superintendent to order the partitioning of a school district that he or she supervises and divide it in accordance with procedures that parallel, in several respects, the procedures prescribed in the statute that is challenged in this case. Although the partitioning authorized by the new law might be sought by the Village of Kiryas Joel if the currently existing school district were abolished, there is no certainty that Kiryas Joel will be able to avail itself of the new statute, and the new law neither moots this case nor diminishes the significance of the issues presented by our petition for a writ of certiorari.

The newly enacted legislation adds § 2218 to New York's Education Law, leaving intact the existing provision (Education Law § 1504) under which Kiryas Joel's current school district was created. The new law expressly states in its opening section that the authority it grants to partition the territory of school districts is "in addition to the authority granted under the provisions of article thirty-one of this chapter" (the article that contains § 1504).

Under the new law, a school district may be partitioned to create a separate district for a municipality (defined as a city with a population of less than 125,000, or a village or a town) that is wholly contained within the existing district. The procedure requires approval by the municipality that desires to form its own district and by the existing district. The approval in each case must be either by majority vote in a special election or by a two-thirds vote of the governing body of the district or municipality. According to a statement

issued by Governor Pataki's office, the new law potentially applies to 29 New York municipalities that satisfy its population requirements and are wholly contained within larger school districts. *See* Joseph Berger, *4th Attempt to Aid Hasidic Village*, N.Y. TIMES, Aug. 5, 1999.

The new law contains detailed provisions concerning the preparation of reorganization plans for the new and existing districts, the rights of teachers and employees of the existing district, and the allocation of property, indebtedness, and state aid funds between the new and existing districts.

Although media accounts have described the legislation as intended to apply to Kiryas Joel, *see id.*, the new law would not be available to Kiryas Joel unless the judgment of the New York Court of Appeals in this case went into effect. The partition provision applies only to municipalities that are currently included in larger school districts. Kiryas Joel does not satisfy this definition and will not do so unless the judgment below becomes effective through denial of certiorari or affirmance by this Court.

The new legislation does not diminish the need for this Court to resolve this case, which continues to present issues of "importance to the public as distinguished from that of the parties." *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923). Review should be granted to correct the New York court's distortion of Establishment Clause principles and its fundamental misreading of this Court's decision in *Kiryas Joel I*. New legislation can do nothing to correct the decision's pernicious precedential effects.

Nor does passage of the new law render the case moot. This is not a case where the underlying statute has been repealed or deprived of practical significance. *E.g.*, *Diffenderfer v. Central Baptist Church of Miami*, 404 U.S. 412 (1972); *Sanks v. Georgia*, 401 U.S. 144 (1971); *Hall v. Beals*, 396 U.S. 45 (1969).

A case is not moot if this Court can grant "any effectual relief whatever." *Calderon v. Moore*, 518 U.S. 149, 150 (1996). There is no doubt that a decision in this case would grant one side or the other "effectual relief"—either by definitively laying to rest the claim that the Kiryas Joel school district is unconstitutional or by invalidating the existing district and relegating the parties to their uncertain prospects under the new law. In similar cases, this Court has consistently held that a case is not mooted by new legislation where the new law will be effective only if the Court strikes down the old one, or where the Court's decision can resurrect the old law. *See, e.g., Hunt v. Cromartie*, 119 S. Ct. 1545, 1548 n.1 (1999); *Zablocki v. Redhail*, 434 U.S. 374, 382 (1978).

The outcome of this case continues to have very real consequences for the parties. If this Court were to reverse the decision below, the existence of the Kiryas Joel school district would be finally secured without regard to the new law. If this Court were to affirm the decision of a majority of the New York Court of Appeals, the existing school district would be dissolved. The creation of a new Kiryas Joel school district would then depend on satisfaction of the requirements of the new statute, including action by the district superintendent and approval by the voters or governing bodies of both the Village and the Monroe-Woodbury School District. Even if these requirements were satisfied, a Kiryas Joel school district formed under the new law would be subject to legal challenge by the opponents of any school district for the Village.

Absent resolution of this case by this Court now, another round of litigation in the New York courts over the constitutionality of the new law (assuming Kiryas Joel were able to use it to form a new school district) is likely. If the decision below remains intact, it will bind the New York courts to the use of an erroneous legal standard in resolving any such litigation. Thus, one New York newspaper has

predicted that the New York courts will strike down the neutral legislation because it is intended to accommodate the needs of Kiryas Joel. *After the Budget, What?*, ALBANY TIMES UNION, Aug. 6, 1999, at A12.

The Court can forestall another round of fruitless and misguided litigation by ruling that the constitutionality of a neutral statute motivated by a desire to accommodate a religious community is not dependent on a nose-count of its religious and nonreligious beneficiaries.

CONCLUSION

For the foregoing reasons, as well as those set forth in our petition for a writ of certiorari and reply brief, the petition for a writ of certiorari should be granted. The decision of the New York Court of Appeals may be summarily reversed.

Respectfully submitted,

NATHAN LEWIN
SCOTT L. NELSON
J. BRADLEY BENNETT
MILLER, CASSIDY,
LARROCA & LEWIN, L.L.P.
2555 M Street, N.W.
Washington, D.C. 20037
(202) 293-6400

GEORGE SHEBITZ
JULIA R. COHEN
GEORGE SHEBITZ &
ASSOCIATES, P.C.
1370 Avenue of
the Americas
New York, NY 10019
(212) 307-0909

Attorneys for the Board of Education of the Kiryas Joel Union Free School District

ELIOT SPITZER
Attorney General of the State
of New York
PREETA D. BANSAL*
Solicitor General of the State
of New York
PETER H. SCHIFF
Deputy Solicitor General
JULIE S. MERESON
Assistant Attorney General
The Capitol
Albany, New York 12224
(518) 474-8101

Attorneys for the State Petitioners

LAWRENCE W. REICH
INGERMAN SMITH, L.L.P.
167 Main Street
Northport, New York 11768
(516) 261-8834

Attorneys for the Board of Education of the Monroe-Woodbury Central School District

September 1999

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* *Counsel of Record.*

APPENDIX

Section 83. The education law is amended by adding a new section 2218 to read as follows:

SECTION 2218. Partitioning of territory and formation of new school districts by district superintendents. Notwithstanding any other provision of law to the contrary, in addition to the authority granted under the provisions of article thirty-one of this chapter, a district superintendent of schools may order the partitioning of territory from an existing union free, central, central high school or enlarged city school district that is located within his or her supervisory district, the dissolution and reformation of the existing school district where necessary and the formation of a new union free or city school district out of such territory in accordance with the provisions of this section.

1. Definitions: For the purposes of this section and section thirty-six hundred two-f of this chapter:

a. "Actual valuation" means the actual valuation, as defined in paragraph c of subdivision one of section thirty-six hundred two of this chapter, of a school district that would result from reorganization pursuant to this section.

b. "Enlarged city school district" means a city school district of a city having a population of less than one hundred twenty-five thousand inhabitants that includes areas outside of the city boundaries.

c. "Enrollment" means the unduplicated count of all children registered to receive educational services in grades kindergarten through twelve, including children in ungraded programs as registered on the date prior to November first

that is specified by the commissioner as the enrollment reporting date for the school district or non-public school, as reported to the commissioner.

d. "Municipality" means a city having a population of less than one hundred twenty-five thousand inhabitants, a village or a town, wholly contained in one school district.

e. "New school district" means the school district formed or reformed from the territory partitioned from the pre-existing school district that is coterminous with a municipality.

f. "Pre-existing school district" means a union free, central, central high school or enlarged city school district from which territory is to be partitioned pursuant to this section.

g. "Remaining school district" means the school district remaining after its boundary is altered to partition a municipality.

h. "Union free school district" means any union free school district other than a special act school district as defined in subdivision eight of section four thousand one of this chapter.

2. Minimum qualifications. To be eligible for reorganization pursuant to this section, the municipality seeking to reorganize a new school district shall have a population of at least ten thousand inhabitants and the remaining school district shall have an enrollment of at least one thousand children, provided that any territory that was added to the pre-existing school district by vote for annexation, centralization or consolidation shall not be eligible for partitioning pursuant to this section until five

years after the vote approving such annexation, centralization or consolidation.

3. Procedure for reorganization.

a. Reorganization pursuant to this section may be initiated by a petition to the board of education of the pre-existing school district submitted by the governing body of the municipality seeking to reorganize a new school district. If the board of education determines that the petition has been properly submitted and that the territory described in the petition meets the minimum qualifications for reorganization under this section, it shall transmit a copy to the district superintendent with a request for assistance in the development of a plan for reorganization to form a new union free or city school district out of such territory.

b. The district superintendent shall assist the petitioners in developing such reorganization plan in consultation with representatives of the pre-existing school district. Such reorganization plan shall:

(i) describe the boundaries of the new school district;

(ii) state the effective date of the reorganization and indicate whether the new school district will be a union free school district or a city school district and, in the case of reorganization involving a central high school district or a city school district, the type of school district that the remaining school district will be;

(iii) describe how the facilities needs of the new school district will be met;

(iv) describe the impact of the reorganization upon

teachers and other employees of the pre-existing school district;

(v) describe the educational programs and services to be provided by the new school district, and for any reorganization that will take effect during a school year, describe how programs and services to students residing in the new school district will be continued without disruption for the balance of such school year;

(vi) set forth any real or personal property of the pre-existing school district that will be transferred to the new school district in accordance with this section;

(vii)provide for a proposed allocation of the bonded indebtedness of the pre-existing school district incurred while the territory to be partitioned was part of such pre-existing school district and for a proposed allocation of other debt of the pre-existing school district;

(viii) describe the impact of the reorganization on the contractual obligations of the pre-existing school district;

(ix) include a proposed budget for the new school district for the first school year of its operation and estimate the impact of the proposed reorganization on school taxes for taxpayers in the new school district and the remaining school district; and

(x) describe any necessary transition procedures for the first school year of operation of the new school district, including but not limited to procedures for the recommendation of special education programs and services for students with disabilities and preschool children with disabilities residing within the new school district.

c. The district superintendent shall review the proposed reorganization plan and determine whether it is in compliance with the requirements of this section. If the district superintendent certifies to the board of education of the pre-existing school district that such plan is in compliance, such board, within twenty days after receipt of such certification, shall proceed to call a special district meeting to conduct a vote on the proposed reorganization unless such reorganization is approved by a vote of the board of education to the extent provided under paragraph d of this subdivision and shall schedule at least one public hearing on the proposed reorganization, to be held not less than seven days prior to the vote. Notice of such special district meeting shall specify the date and time at which the vote will be held, which shall be not less than twenty nor more than thirty days after the publication or posting of such notice, and the place or places within the pre-existing school district at which the vote will be held. Such notice shall be published at least once a week for three consecutive weeks preceding the meeting in at least one newspaper in general circulation in the pre-existing school district, and if there be no such newspaper in general circulation in the district, such notice shall be posted in at least five conspicuous places in said district at least twenty days before such meeting.

d. The proposed reorganization shall be subject to approval by:

(i) a majority vote of the qualified voters residing in such municipality, or a vote of at least two-thirds of the governing body of such municipality, and

(ii) a majority vote of the qualified voters residing in the remaining school district, or a vote of at least two-thirds of the board of education of the pre-existing school district provided that a member who resides in such

municipality shall be ineligible to vote as a school board member on the proposition for reorganization.

e. Notwithstanding any other provision of law to the contrary, the board of education of the pre-existing school district shall be authorized to establish special election districts for the purpose of conducting the votes required under paragraph d of this subdivision, and the district superintendent shall be authorized to order any other modifications in school election procedures that are needed to carry out the provisions of this section.

4. Order of district superintendent. The clerk of the pre-existing school district shall file with the district superintendent a certification of the results of the votes required by paragraph d of subdivision three of this section. Upon filing of a certification that both required votes are in favor of reorganization, the district superintendent shall issue an order forming or reforming the new school district, altering the boundaries of the pre-existing school district accordingly, and, where necessary, reforming the remaining school district and shall file such order in the manner prescribed in section fifteen hundred six of this chapter. The new school district shall be formed as a union free school district authorized to provide instruction in grades kindergarten through twelve, except that if the new school district is coterminous with a city having a population of one hundred twenty-five thousand inhabitants or less, such order shall designate such district as a city school district. Notwithstanding the foregoing, where the territory partitioned from a central high school district is coterminous with a former component school district of such central high school district, the district superintendent's order shall reform the component school district as a union free school district authorized to provide instruction in grades kindergarten through twelve. The remaining school district shall retain its

status as a Union free, central, central high school or city school district, except that (i) where the new school district is a city school district, the remaining school district shall be reformed as a union free school district, and (ii) where such reorganization would result in a central high school district with only one component district, the district superintendent shall order reformation of the remaining central high school district into a union free school district.

5. Effect of partitioning of territory.

a. If there is outstanding bonded indebtedness chargeable against the pre-existing school district at the time of reorganization incurred while the territory to be partitioned was part of such pre-existing school district, the district superintendent shall apportion such indebtedness between the new school district and the remaining school district according to the actual valuation of the two districts, based on data on file with the commissioner; and any approved expenditures for debt service represented by such apportioned indebtedness shall be eligible for an apportionment of building aid computed pursuant to subdivision six of section thirty-six hundred two of this chapter using an aid ratio computed for use in any year commencing with the nineteen hundred eighty-one -- eighty-two school year for the pre-existing school district. The portion of such bonded indebtedness so apportioned shall become a charge upon the respective districts as though the same had been incurred by said districts separately, and the amount so apportioned shall not be adjusted thereafter.

b. Where the pre-existing school district has incurred indebtedness other than bonds or notes for the benefit of the residents of the municipality such other debt may be apportioned by the district superintendent between the new school district and the remaining school district in the

manner and to the extent provided in the reorganization plan.

c. Upon the effective date of the reorganization, legal title and all other property rights to any school facility of the pre-existing school district that is located within the new school district shall be transferred to such new school district, except that school facilities of a central high school district shall remain the property of the central high school district. The district superintendent shall apportion the value of any school facility so transferred between the new school district and the remaining school district accord to the actual valuation of the two districts based on data on file with the commissioner. In determining such value, the district superintendent shall deduct from the fair market value of the school facility the amount of any outstanding bonded indebtedness on such facility. The cost of an appraisal to determine fair market value shall be a charge upon the new school district. The board of education of the new school district shall reimburse the board of education of the remaining school district in an amount equal to the remaining school district's share of the value of the school facility as apportioned by the district superintendent, and such amount shall be a charge upon the new school district.

d. Any school bus or personal property of the pre-existing school district that is no longer needed by the remaining school district may be transferred to the new school district upon such terms and conditions as may be agreed upon by the boards of education of the remaining school district and the new school district.

e. For any reorganization pursuant to this section that takes effect during a school year, the district superintendent shall apportion the administrative expense of the board of cooperative educational services chargeable to the pre-existing school district between the new school district and

the remaining district based on the actual valuation of the two districts.

f. Members of the teaching and supervisory staff of the pre-existing school district at the time of the reorganization shall have the right to select the school district in which he or she shall be considered an employee, with the same tenure status he or she maintained in the pre-existing school district. Such selection shall be based on each teacher's seniority in the pre-existing school district, with the right of selection passing from such teachers with the most seniority to such teachers with the least seniority. Any such teacher who is unable to obtain a teaching position in the new school district because the number of positions needed is less than the number of teachers eligible to be considered employees pursuant to this paragraph shall, in such new school district and in the remaining school district, be placed on a preferred eligible list of candidates for appointment to a vacancy that may thereafter occur in a position similar to the one such teacher filled in the pre-existing school district. Such teachers shall be appointed to vacancies in such corresponding or similar positions in the order of their length of service in the pre-existing school district, within seven years from the date of the reorganization pursuant to this section. For such teachers, for salary, sick leave or any other purpose, the length of service credited in the pre-existing school district shall be credited as employment time with the new school district or the remaining school district, as applicable.

g. Members of the board of education of the pre-existing school district who reside in the territory partitioned pursuant to this section shall vacate their positions on the effective date of the reorganization, and the vacancies so created shall be filled in the manner provided by law, provided, however, that if the board of education of the

remaining school district is unable to obtain a quorum to vote on whether to fill such vacancies by appointment or to call a special district meeting to fill the vacancies by election within thirty days after the reorganization, the district superintendent shall be authorized to fill such vacancies until the next annual meeting and election of the district. Whenever a school district is reformed pursuant to this section, the reformed school district shall be the successor in interest of the former school district and the board of education of the former school district shall continue as the board of education of the reformed school district, except that where a central high school district is reformed as a union free school district the board of education of the component school district that is coterminous with the central high school district shall become the board of education of the reformed school district, and the members of the board of education of the central high school district shall vacate their positions on the effective date of the reorganization.

h. Notwithstanding any other provision of law to the contrary, if a proposal for reorganization pursuant to this section is defeated by the voters, such proposal may not be resubmitted for a vote until two years after the original vote.

Section 83-a. The education law is amended by adding a new section 3602-f to read as follows:

Section 3602-f. Apportionment of moneys to school districts that result from the partitioning of territory and formation of new school districts by district superintendents. Notwithstanding any other provision of law to the contrary, the apportionment of public money payable to school districts resulting from the partitioning of territory and formation of new school districts pursuant to section twenty-two hundred eighteen of this chapter shall be computed

pursuant to section thirty-six hundred two of this article as adjusted by this section.

1. Definitions. As used in this section the following terms shall be defined as follows:

a. "Combined data" shall mean any data or reports of factors specified in statute or regulation for the calculation and payment of any apportionment of state aid during the current school year pursuant to this chapter that derive from the annual records of the pre-existing school district, the remaining school district or the new school district for any school year ending prior to the first complete school year commencing on or after partitioning of territory of the pre-existing school district and formation of the new and remaining school districts pursuant to section twenty-two hundred eighteen of this chapter.

b. "Partitioned data" shall mean:

(i) for the new school district, the product of combined data multiplied by the quotient of the resident public school district enrollment during the current year of such new school district divided by the sum of the resident public school district enrollment during the current year of the new school district and of the remaining school district, and

(ii) for the remaining school district the product of combined data multiplied by the quotient of the resident public school district enrollment during the current year of such remaining school district divided by the sum of the resident public school district enrollment during the current year of the new school district and of the remaining school district.

c. "Adjusted actual valuation" shall mean the product of the actual valuation of the pre-existing school district, as defined in paragraph c of subdivision one of section thirty-six hundred two of this article, that would have been used to compute aids apportioned to the pre-existing school district in the current school year if partitioning had not occurred, and the actual valuation adjustment factor.

d. "Actual valuation adjustment factor" shall mean

(i) the quotient of the total taxable value of the assessment roll used by the school district claiming an apportionment pursuant to this section to levy taxes in the first complete school year commencing on or after partitioning divided by the applicable equalization rate used to apportion such tax levy, divided by

(ii) the sum of such quotients computed for the new school district and for the remaining school district. Such factor shall be computed by the director of the office of real property services based on reports to be submitted to the director of real property services by the new school district and by the remaining school district, in a format specified by the director, no later than thirty days after the levy of taxes for the first complete school year commencing on or after partitioning. The director of the office of real property services shall certify the value computed for the new school district and for the remaining school district to the commissioner no later than thirty days after the receipt of such reports.

e. "Adjusted income" shall mean the product of the adjusted gross income of the pre-existing school district as set forth in paragraph k of subdivision one of section thirty-six hundred two of this article, that would have been used to compute aids apportioned to the pre-existing school district

in the current school year if partitioning had not occurred, and the actual valuation adjustment factor.

2. Notwithstanding any other provision of this chapter, for the purposes of computing any apportionment of state aid payable pursuant to this chapter to the new school district or to the remaining school district during the first complete school year commencing on or after partitioning or any school year thereafter, the following factors used in the apportionment and payment of aid to the new school district or to the remaining school district shall be used in lieu of the indicated factors for any calculations that are based pursuant to statute on such data for a school year ending prior to such first complete school year commencing on or after partitioning, except that where the commissioner determines that more accurate data is available for actual valuation and/or income, the commissioner shall use such more accurate data:

a. Adjusted actual valuation as defined in paragraph c of subdivision one of this section in lieu of actual valuation as defined in paragraph c of subdivision one of section thirty-six hundred two of this article.

b. Adjusted income as defined in paragraph e of subdivision one of this section in lieu of adjusted gross income as set forth in paragraph k of subdivision one of section thirty-six hundred two of this article.

3. Notwithstanding any other provision of this chapter, for the purposes of computing any apportionment of state aid payable pursuant to this chapter to the new school district or to the remaining school district during the first complete school year commencing on or after partitioning or any school year thereafter, the following factors used in the apportionment and payment of aid to the new school district

or to the remaining school district shall be computed using combined data for any calculations that are based pursuant to statute on such data for a school year ending prior to such first complete school year commencing on or after partitioning.

a. Percentage of pupils with special educational needs as defined in subparagraph one of paragraph e of subdivision one of section thirty-six hundred two of this article.

b. Expense per pupil as defined in paragraph f of subdivision one of section thirty-six hundred two of this article.

c. Attendance ratio as defined in paragraph m of subdivision one of section thirty-six hundred two of this article.

d. Percent of eligible applicants for the free and reduced price lunch program as defined in paragraph p of subdivision one of section thirty-six hundred two of this article.

e. Sparsity factor as set forth in subparagraph (ii) of paragraph r of subdivision one of section thirty-six hundred two of this article.

f. Percentage of pupils with compensatory educational needs as defined in paragraph t of subdivision one of section thirty-six hundred two of this article.

g. Tax effort ratio as defined in subparagraph one of paragraph a of subdivision sixteen of section thirty-six hundred two of this article.

h. Residential real property tax levy as defined in

subparagraph three of paragraph a of subdivision sixteen of section thirty-six hundred two of this article.

i. School district basic contribution as defined in subdivision eight of section forty-four hundred one of this chapter.

4. Notwithstanding any other provision of this chapter, for the purposes of computing any apportionment of state aid payable pursuant to this chapter to the new school district or to the remaining school district during the first complete school year commencing on or after partitioning or any school year thereafter, the following factors used in the apportionment of aid to the new school district or to the remaining school district shall be computed using partitioned data for any calculations that are based pursuant to statute on such data for a school year ending prior to such first complete school year commencing on or after partitioning:

a. Summer session pupils as defined in paragraph g of subdivision one of section thirty-six hundred two of this article.

b. Comprehensive operating aids base as defined in paragraph j of subdivision one of section thirty-six hundred two of this article.

c. Enrollment, public school district enrollment, nonpublic school enrollment, resident public school district enrollment, resident nonpublic school district enrollment and additional public school enrollment each as defined in paragraph n of subdivision one of section thirty-six hundred two of this article.

d. Limited English proficient pupil count as defined in paragraph o of subdivision one of section thirty-six hundred

two of this article.

e. Public excess cost aid base as defined in paragraph y of subdivision one of section thirty-six hundred two of this article.

f. Extraordinary needs aid base as defined in paragraph z of subdivision one of section thirty-six hundred two of this article.

g. Resident weighted average daily attendance as defined in subdivision two of section thirty-six hundred two of this article.

h. Adjusted average daily attendance as defined in subdivision two-a of section thirty-six hundred two of this article.

i. Total wealth pupil units as defined in subdivision two b of section thirty-six hundred two of this article.

j. Approved transportation expense as defined in subdivision seven of section thirty-six hundred two of this article.

k. Total aidable pupil units as defined in subdivision eight of section thirty-six hundred two of this article.

l. Weighted pupils with handicapping conditions as defined in subparagraph b of paragraph one of subdivision nineteen of section thirty-six hundred two of this article.

m. Number of declassified pupils as defined in paragraph seven of subdivision nineteen of section thirty-six hundred two of this article.

n. Approved expenses for instructional computer hardware and technology equipment as defined in subdivision twenty-six of section thirty-six hundred two of this article.

o. Approved expenses for instructional computer technology as defined in subdivision twenty-six-a of section thirty-six hundred two of this article.

5. In the event the effective date of a reorganization pursuant to section twenty-two hundred eighteen of this chapter is after July first in any school year, or for any other grant or apportionment of aid not referenced in this section, aid shall be computed in the manner prescribed in the regulations of the commissioner.

6. Notwithstanding any provision of section three hundred fourteen of this chapter or paragraph a of subdivision fourteen of section thirty-six hundred two of this article to the contrary, a school district that has been reorganized pursuant to section twenty-two hundred eighteen of this chapter shall be eligible for apportionments of building aid pursuant to subdivision six of such section thirty-six hundred two of this article and this section for the construction, acquisition, reconstruction, rehabilitation or improvement of school buildings after a reorganization pursuant to section twenty-two hundred eighteen of this chapter despite any inconsistency between such reorganization and the state plan for school reorganization. In addition, following the partitioning of territory pursuant to section twenty-two hundred eighteen of this chapter, the remaining school district shall continue to be eligible to receive reorganization incentive aid and/or reorganization incentive building aid for a prior reorganization in accordance with subdivision fourteen of section thirty-six hundred two of this article, except where such partitioning reverses the prior

reorganization for which such aid would be paid.